CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No .2

BAYSIDE FISH FLOUR COMPANY, APPELLANT,

vs.

J. DALE GENTRY, EARL B. GILMORE, I. ZELLERBACH, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

FILED JANUARY 29, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 2

BAYSIDE FISH FLOUR COMPANY, APPELLANT,

vs.

J. DALE GENTRY, EARL B. GILMORE, I. ZELLERBACH, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF CALIFORNIA.

INDEX.

	Original	Print
Record from D. C. U. S., Northern California	1	1
Bill of complaint	1	1
Exhibit "A"—Excerpts from fish and game code	24	19
Exhibit "B"—Fish packers license	28	24
Exhibit "C"—Letters patent No. 1,501,775	29	24
Exhibit "D"—Statement showing sardines taken by canners and use made thereof	30	25
Affidavit of R. L. Daily	31	26
Exhibit "A"—Report of Fish and Game Commission, February 14, 1934	37	31
Affidavit of Edward David	38	32
Joseph G. Gisler	41	34
John R. Grigg	43	35
E. W. Lockwood	46	38
E. T. Meekin	48	39
Y. Worrall	50	40

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 7, 1935.

—6944-C

	Original	Print
Exhibit "A"—Agreement of October 9, 1933	53	42
Motion to dismiss	54	43
Memorandum of points and authorities	55	43
Opinion, St. Sure, J.	58	46
Order granting motion to dismiss	62	50
Order vacating order of August 31, 1934, and granting motion to dismiss	63	50
Petition for appeal	64	51
Points and authorities	66	52
Assignments of error	67	52
Order allowing appeal	75	53
Bond on appeal (omitted in printing)	76	
Præcipe for transcript of record	78	54
Clerk's certificate (omitted in printing)	79	
Citation and service (" " ")	80	

[fol. 1]

IN UNITED STATES DISTRICT COURT, SOUTHERN DIVISION OF THE NORTHERN DISTRICT OF CALIFORNIA

In Equity.

No. 3721-S.

BAYSIDE FISH FLOUR COMPANY, a Corporation, Plaintiff,

vs.

J. DALE GENTRY, EARL B. GILMORE, I. ZELLERBACH, U. S. WEBB AND JOHN L. FARLEY, Defendants

BILL OF COMPLAINT FOR INJUNCTION—Filed May 12, 1934

Now comes the plaintiff, above named, and complains of the defendants, above named, and for cause of action, alleges:

I

This suit is brought in a court of equity in the United States and the jurisdiction of the court is asserted and claimed for, that the plaintiff is threatened with and subjected to the irreparable harm, injury and damage hereinafter set out and are without adequate remedy, except in a court of equity. This suit is brought for injunction and other equitable relief.

II

That the plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of California and a citizen of the United States and a resident of the State and Southern Division of the Northern District of California.

III

That the above entitled suit arises under the Constitution and laws of the United States, within the meaning of Sub-
[fol. 2] division First of Section 24, of the Judicial Code, and that the matter in controversy exceeds, exclusive of interest and costs, the sum of Three Thousand ($3,000.00) Dollars, to wit: the sum of Sixty-Five Thousand ($65,000.00) Dollars.

IV

That, in and by the Constitution of the United States, Article 1, Section VIII, Clause 3, it is provided:

"The Congress shall have power, . . .

"3. To regulate commerce with foreign nations and among the several states and with the Indian Tribes."

That the defendants seek to, and do, arbitrarily and unreasonably interfere with the commerce clause of the Constitution above set forth as will hereinafter in this bill of complaint more particularly and at large appear.

V

That the above entitled suit is also one arising under the laws of the United States regulating commerce, within the meaning of Subdivision Eight of Section 24 of the Judicial Code, and that said defendants seek to, and do, arbitrarily and unreasonably interfere with the laws of the United States regulating commerce as will hereinafter in this bill of complaint more particularly and at large appear.

VI

That the above entitled suit is also one authorized by law to be brought by any person to redress the deprivation, under color of any law, statute, ordinance, regulation, custom or usage of any State, of any right, privilege, or immunity, secured by the Constitution of the United States, and of any right secured by any law of the United States providing for equal rights of citizens of the United States and of all persons within the jurisdiction of the United States, within the meaning of subdivision Four-
[fol. 3] teenth of Section 24 of the Judicial Code, and that said defendants seek to, and do, arbitrarily and unreasonably deprive, under color of law, statute, ordinance, regulation, custom and usage of the State of California, of a right, privilege and immunity, secured by the Constitution of the United States, to wit: the right lawfully to engage in commerce between the several states and with foreign nations, and said defendants seek to, and do, deprive the plaintiff of equal rights secured to the citizens of the United States, as will hereinafter in this bill of complaint more particularly and at large appear.

VII

That the above-entitled suit is also one authorized by law to be brought by any person requesting an interlocutory injunction suspending or restraining the enforcement, operation or execution of any statute of a State to restrain the action of any officer of such State in the enforcement or execution of a statute, or the enforcement or execution of an order of an administrative board or commission acting under and pursuant to the statutes of such State, upon the ground of the unconstitutionality of such statute where irreparable loss or damage will result to the complainant unless a temporary restraining order is granted by three judges, of whom at least one shall be a justice of the Supreme Court or a circuit judge, and the other two may be either circuit or district judges, within the meaning of Section 266 of the Judicial Code, U. S. C., Title 24, Section 380, and that said defendants seek to, and do arbitrarily and unreasonably construe and attempt to enforce an unconstitutional statute of the State of California; to wit, Article 4, General Commercial Regulations, Sections 1060 and 1077 inclusive, of the Fish and Game Code, of the State of California, effective August 31, 1933. (Copy of which is attached hereto and made a part hereof and marked Exhibit "A".)

[fol. 4] VIII

This is a controversy arising under the constitutions and laws of the United States, in that the complainants allege and aver and claim that sections 1064, 1065 and 1076 of "An act to establish a Fish and Game Code therein revising and consolidating the law relating to Fish and Game and other wild life and repealing certain provisions of law therein specified." Chapter 73 passed by the Legislature of the State of California and approved April 11, 1933, and in effect August 21, 1933, are in contravention of and violate Paragraph 3, Subdivision 8, Article 1 of the Constitution of the United States, conferring upon Congress the exclusive power to regulate commerce within foreign nations and among the several States and with the Indian Tribes, paragraph 2 of Article 6 containing the following provision:

"This constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties

made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

Article 1, of the Fourteenth Amendment to the Constitution of the United States, contains the following provision:

"1. Who are citizens.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Complainants further claim that the said Fish and Game [fol. 5] Code, or Act, of the Legislature of the State of California, and especially the sections hereinbefore set out, if so construed as to deny the plaintiff the relief prayed for in this bill, violates portions of Section 13 and 14 of the Declaration of Rights, Article 1, of the Constitution of the State of California, in the following language:,

"No person shall be deprived of life, liberty or property without due process of law and private property shall not be taken or damaged for public use without just compensation having first been made to the owner."

And, also, Section 25, Nineteenth, Article 4 of the State of California, in the following language:

"The legislature shall not pass local or special laws in any of the following enumerated cases, that is to say:

Nineteenth: Granting to any corporation or association or individual, any special or exclusive right, privilege or immunity."

And, also, Section 11 of Article 1 of the Constitution of the State of California containing the following language:

"All laws of a general nature shall have a uniform operation."

Also, Section 21 of Article 1 of the Constitution of the State of California containing the following language:

"No special privileges or immunities shall ever be granted which may nor be altered, revoked or repealed by the legislature, nor shall any citizen or class of citizens be granted privileges or immunities which, upon the same terms, shall not be granted to all citizens."

And, also, Section 3 of Article 1 of the Constitution of the State of California, containing the following language:

[fol. 6] "The State of California is an inseparable part of the American Union and the Constitution of the United States is the supreme law of the land."

Plaintiff further alleges that those sections of Article 4, General Commercial Regulations of the Fish and Game Code of the State of California, are unconstitutional, discriminatory and violative of the Constitution of the State of California and of the United States, hereinbefore above referred to, as such construction deprives plaintiff of its property without due process of law and grants to canning corporations special privileges and denies to this plaintiff the equal protection of the law, insofar as Sections 1064, 1065 and 1076 thereof makes it unlawful to use any fish or part thereof, except fish offal by reduction process used in the manufacture of an edible product, to wit, fish flour fit for use, intended for use and actually used for human consumption from sardines lawfully taken and shipped into the state from outside the three mile limit of the state, during an open season and the reshipping of said product manufactured from said sardines in foreign and interstate commerce, and further making the use of said reduction process a nuisance and punishment by a fine of not more than $500.00 or by imprisonment in the County Jail for not to exceed six months or both, and abating said building or place where said food product is manufactured for a period of one year under Sections 1065, 1076 and 1410 of said Act.

IX

That the plaintiff, Bayside Fish Flour Company, is a corporation engaged in the exclusive business of purchasing fresh or raw sardines from fishermen domiciled in the

States of Oregon and Washington and catching fish upon the High Seas of the Pacific Ocean beyond the three mile limit of the State of California and after said fish are brought within the State of California, then manufacturing an edible product, to wit, fish flour for human consumption [fol. 7] from the meat of said sardines. That other fishermen who also bring their product within the State of California, sells same to sardine canners and processers who ship their product in interstate and foreign commerce. That this plaintiff only manufactures and sells its product, to wit, fish flour, for use in foreign and interstate commerce and only operates its said plant during the open season when the other canners and/or processers are permitted to take sardines, to wit, from August 1st to February 15th, from the waters of the State of California and when it is lawful to bring sardines within the State of California. At no time does this plaintiff's product, to wit, fish flour, become intermingled with intrastate commerce.

That the history of sardines shows that they have no value as a food product in their natural state and that the greater majority of the food product canned by the sardine canners is put up in one pound oval cans. That said sardines are used, after canning by a class of people of a lower grade than the people of the State of California; that their greatest value is evident after being packed and shipped in interstate and foreign commerce to those parts of the United States and foreign countries where such sardines cannot be obtained. That during the sardine season, this plaintiff employs between six and eight sardine fishing purse sein- boats, employing approximately 100 fishermen and 25 to 30 employees in its plant.

X

Plaintiff also shows unto the court that sardines used by it, and the one pound oval canners, of the State of California, is a migratory fish of such a nature that its real place of incubation is not with certainty known even to the most expert fish catchers. Sardines are found from the lower part of Mexico up as far as Alaska and as far as Japan, to the west; and, as far as is known to science, the said sardines spawn upon the open seas and are found in [fol. 8] unlimited numbers in the Pacific Ocean outside of the three mile limit of the State of California.

XI

Plaintiff shows unto the Court that the Bayside Fish Flour Company, plaintiff, contracted during the season 1933-34, beginning August 1, 1933, and ending the 15th day of February, 1934, to purchase sardines from various fishermen residing in the States of Oregon and Washington, and also contracted to sell, transport and deliver to various purchasers in the United States and also in Germany and Holland, fish flour to be used for human consumption manufactured from sardines to be purchased from the above referred to fishermen. That the said contracts were based upon valuable considerations and the delivery of said sardines to this plaintiff was necessary so plaintiff could supply the demands of its business in interstate and foreign commerce, and that it will be necessary for this plaintiff to again enter into contracts with fishermen from the States of Washington and Oregon to purchase sardines from them for the coming season 1934-35, beginning August 1, 1934 and ending February 15, 1935, and unless plaintiff can obtain the supply of sardines under contract with fishermen, its business will be destroyed, its plants rendered valueless, its business ruined and its employees thrown out of employment.

That it is also necessary for this plaintiff to enter into contracts for the sale of its commodities in other states and foreign countries before the beginning of the said 1934-35 season, and it further becomes necessary for this plaintiff to make improvements and additions upon its plant approximating $10,000.00 before said plant can operate during the next open 1934-35 sardine season, and said contracts must be entered into at this time or it will be too late to begin next season's operations and if plaintiff is prohibited from entering into said contracts for its supply [fol. 9] of sardines now, the canners will have contracted for all fishing boats and there will be no fishing boats available to supply plaintiff's plants.

XII

That defendants herein actually interfered with the performance of contracts between this plaintiff and their fishermen during the month of January, 1934, and enjoined this plaintiff from fulfilling the obligations of and performing its contracts; also, said defendants herein have tempo-

rarily enjoined this plaintiff from doing business for the next ensuing sardine fishing season, beginning August 1, 1934 and ending February 15, 1935, and will abate this plaintiff's property for a period of one year and prohibit it from conducting its business and entering into new contracts and performing the same, unless restrained by this court; that all of the above acts of said defendants are based upon their construction of the fish and game laws, which construction is in violation of the Federal Constitution hereinbefore set forth.

That the fishing grounds, wherein all of the sardines are caught by the fishermen, who deliver said sardines to plaintiff, are located in that portion of the Pacific Ocean, three miles beyond the San Francisco Bay and in which fishing ground there are numerous outside floating plants operating and taking fish for straight reduction purposes in the manufacture of non-edible products only, and that the said Fish and Game Commission of the State of California maintains a patrol to see that the fishermen furnishing fish to the outside reduction plants do not catch sardines within the three mile coastal limits of the State of California.

XIII

The plaintiff shows unto this Court that the Bayside Fish Flour Company was at all times ready, willing and able [fol. 10] to comply with its contracts with the fishermen for the purchase of sardines and with the purchasers of its commodities, but that if it attempted to do so, it would have been held in contempt of court and subject to fine and imprisonment.

Plaintiff shows unto the court that if the Sections of said Fish and Game Code, especially Sections 1064, 1065, 1076 and 1410, are valid, the plaintiff, Bayside Fish Flour Company, its agents, servants, employees and property will be subject to a fine of not more than $500.00 or *by* imprisonment in the County Jail for not to exceed six months, or both and also have its plant closed down and abated for a period of one year, by reason of which the plaintiff, its agents and servants would suffer irreparable harm and damage.

XIV

The plaintiff shows onto the court that the construction placed by the Fish and Game Commission upon Sections

1064, 1065 and 1076 violates the 14th Amendment to the Constitution of the United States, hereinbefore set out in that the people of the State of California will not permit this plaintiff to manufacture a product for human consumption by a reduction process, either with or without a permit; these sections prohibit this plaintiff from taking sardines unless they are operating a canning or packing plant within the State of California and giving this right to other residents of the State, while it does permit the canners of one pound oval cans to take sardines from the waters of the State of California and purchase sardines from fishermen bringing them from the Ocean and beyond the three mile limit of the State of California, with no limitation upon the number of sardines said canners can take from said waters; and said acts of the people of the State of California violates the 14th Amendment to the Constitution of the United States in that the plaintiff is denied the rights and immunities of citizens, *are* denied the equal protection of the law, and *are* deprived of its property without due process of law.

[fol. 11] Plaintiff shows unto the court that the said Bayside Fish Flour Company could only operate a canning plant in the State of California at a great loss, as the canning of one pound oval cans cannot now, and has not for a number of years, been a profitable one, but that said canners only make a profit out of their by-products, to wit, meal and oil and practically always run their canning plants at a loss.

Complainant shows unto the Court that Sections 1060, 1064, 1065 and 1076 of said Act are further unconstitutional, in that they attempt to compel the Bayside Fish Flour Company to pack sardines in one pound oval cans in California at a loss to it as a condition precedent to its making and filling contracts in foreign and interstate commerce.

Plaintiff further shows onto the Court that there is nothing contained in the Fish and Game Code or any other law of the State of California, prohibiting the importation of sardines, or the sale of fresh sardines or commodities manufactured therefrom, from becoming the subject of barter sale and trade and to become articles of interstate and foreign commerce.

Said Fish and Game Code, Article 4, violates the 14th Amendment to the Constitution of the United States, and

permits this plaintiff to only acquire the same in the State of California, provided it put sardines, in a tin can; said Act violates the 14th Amendment to the Constitution of the United States, in that plaintiff is forbidden to put sardines, after process, in a flour sack; that for the same reason said Act, of the Fish and Game Code, violates the Sections of the Constitution of the State of California, herein referred to.

Plaintiff further shows onto the Court that said Article 4, General Commercial Regulations, Sections 1060 to 1077 inclusive, violates the commerce clause of the Constitution of the United States, in that said section imposes a direct [fol. 12] burden upon interstate commerce; that said sections were not passed to conserve the natural resources of the State of California, because said Act does not prohibit the natural resources of the state, to wit, both the sardines and the commodities manufactured therefrom, to become the subject of interstate barter and commerce and to pass from the State of California; but that the effect and purpose of the Act is to compel the packing and manufacturing of said sardines in tin cans inside of the State of California, which requirement has no relation to a proper exercise of the police power of the State by the Legislature of the State of California; has no relation to a conservation of the natural resources of the state, but that said Article, and sections contained therein, is unreasonable, unlawful, arbitrary and was provided for the purpose of compelling the packing and processing of one pound oval cans of sardines and inhibiting other forms of processing, thereby directly burdening interstate commerce; that therefore, said sections, of Article 4 of the Act violates the Commerce Clause of the Constitution as well as the 14th Amendment thereto and those provisions of the Constitution of the State of California herein referred to.

Plaintiff further shows onto the Court that said sections violates the 14th Amendment of the Constitution of the United States, as well as the various sections of the Constitution of the State of California referred to herein and the Commerce Clause of the Constitution of the United States, in that the effect and purpose of Article 4, Sections 1064 to 1076 inclusive is not only to impose a direct burden upon interstate and foreign commerce, but to create a

monopoly in the manufacture and sale of sardines and place the same in the hands of a number of canners who put sardines in one pound oval cans; that the necessary effect of the Act will be to reduce the market price of the raw sardines and to increase in interstate commerce the price of the finished by-product, fish meal and fish oil; and that said Article 4, and Sections contained therein, was [fol. 13] placed upon the statutes of the State of California for that and no other purpose, was intended to and will have the effect of burdening interstate commerce by increasing the price of the finished by-products to the ultimate consumer and creating a monopoly in the one pound oval canners. That said Article 4 and Sections 1060 and 1076 inclusive, further violates the 14th Amendment to the Constitution of the United States, in that it deprives plaintiff of its right to contract and purchase sardines and ship its finished product and by-products in interstate and foreign commerce.

XV

Plaintiff further shows unto the Court that Article 4, General Commercial Regulations of the Fish and Game Code, violates the 14th Amendment to the Constitution of the United States, as well as the declaration of rights to the Constitution of the State of California, in that in the enforcement of the law corporations and/or persons residing within the State of California, who are engaged in the business of canning and shipping one pound oval cans and their by-products with the full knowledge of the officers of the law charged with the enforcement of the act, are permitted to ship their commodities out of the state and into interstate and foreign commerce, and that the law is only intended to be and sought to be enforced against corporations like the plaintiff operating only a fish flour plant within the State of California. That such one pound oval canners are knowingly permitted and allowed to evade the Fish and Game Code, because the Fish and Game Commissioners do not require the one pound oval canners to have a reduction or extraction permit to put sardines in one pound oval cans and also permits the one pound oval canners to take all the sardines they want from the waters of the State of California, or bring in from the waters outside of the limits of the State of Cali-

fornia, all the sardines they want without limitations [fol. 14] upon the take, and that they also permit the canners of sardines using one pound oval cans to take 32½% of all of the sardines received by them and used for straight reduction purposes; and in addition thereto, they permit the one pound oval canners to use 50% as offal and further they only require said canners to pack 13.5 cases of sardines per ton of fish after deducting the percentage referred to in the said Fish and Game Code and discriminates in every way, shape and form, in favor of the one pound oval canners of sardines and against this complainant.

Plaintiff shows that the Fish and Game Code not only violates the Constitution of the United States in the articles hereinbefore set out, but violates the same as well as the Constitution of the State of California, in administration and enforcement thereof.

XVI

During the sardine season beginning August 1, 1933 and ending February 15, 1934, plaintiff operated a food manufacturing plant located at Point San Pablo, Richmond, Contra Costa County, California, under a "Fish Packers and Wholesale Shell-Fish Dealers License," No. 138, issued to it by the State of California and counter-signed by the President of the Fish and Game Commission and the State Controller under and in conformance with Section 1010 of the Fish and Game Code (Copy of which license is attached hereto, made a part hereof and marked Exhibit "B" said Section 1010 of the Fish and Game Code reading as follows):

"Every person must procure a license for each plant or place of business to engage in the business of:

(a) Canning, curing, preserving or packing fish, taken from the waters of this State or brought into this State in a fresh condition.

(b) Manufacturing fish scrap, fish meal, fish oil, chicken feed or fertilizer from fish or fish offal.

(c) Dealing in mollusks or crustaceans by wholesale."

[fol. 15]

XVII

That the defendants, J. Dale Gentry, Earl B. Gilmore and I. Zellerbach, are members of the Fish and Game Commission of the State of California.

XVIII

That the defendant U. S. Webb, as Attorney General of the State of California, and John L. Farley is Executive Officer of said Fish and Game Commission.

XIX

That fresh sardines are not in and of themselves a valuable article of food generally used for human consumption, and that the only use made of the said sardines is to process said sardines and put them in one pound oval cans and other containers and manufacture from the offal of said fish, fish meal, fish scrap and fish fertilizer, for other than human consumption, and the said fresh sardines are never at any time used by the People of the State of California, in such condition as a food product. Neither do the People of the State of California use a material percentage of the sardines after they are processed, but practically all of said processed products are shipped out of the State of California in both foreign and interstate commerce, to wit, ninety-seven and one-half (97½%) percent of the one pound oval cans, and all of the fish flour for human consumption manufactured by the plaintiff; seventy-five (75%) percent of the fish oil and fifty (50%) percent of the fish meal, fish scrap and fish fertilizer for use other than for human consumption.

XX

That defendants threaten to and do prevent plaintiff from receiving and using fresh sardines, so lawfully taken from the Pacific Ocean and outside of the three mile limit of the waters of the State of California and threaten to and will close the Richmond plant of this plaintiff if it does not [fol. 16] desist from receiving and using said sardines purchased from fishermen lawfully caught outside of the State of California and brought within the state and said fishermen will sell said fish to other processers of sardines if prohibited from selling same to this plaintiff.

Plaintiff also alleges that the several sections of the Fish and Game Code of the State of California, appertaining to sardines, do not prevent the receiving and shipping of sardines or commodities manufactured therefrom, in interstate and foreign commerce, nor do they prohibit the using of sardines lawfully caught outside of the State of California in the manufacture of food products. That the acts of said defendants in endeavoring to restrain, and in fact restraining, plaintiff from receiving and using sardines and manufacturing a product for human consumption therefrom, is directly contrary to the provisions of Article 4, General Commercial Regulations of the Fish and Game Code of the State of California. That said defendants under color of their unconstitutional interpretation of the laws of the State of California, to wit, Article 4, General Commercial Regulations, Sections 1060 to 1077 inclusive of the Fish and Game Code, effective August 21, 1933, seek to and do deprive the plaintiff of a right, privilege and immunity secured by the Constitution of the United States, to wit, Article 1, Section 8, Clause 3 of the Constitution of the United States, the right to engage in foreign and interstate commerce, and Article 14, Section 1 of the Fourteenth Amendment of the Constitution of the United States, abridging the privilege and immunity of a citizen of the United States and denying to this plaintiff equal protection of the laws therein.

That the action of said defendants in endeavoring to restrain, and in restraining, plaintiff from using sardines in the manufacture of a product fit for and used for human consumption is working and will continue to work a great hardship upon it and will continue to deprive it of the free [fol. 17] and unrestricted use of its property and will injure their manufacturing business to such an extent as to ruin and deprive it entirely of their said manufacturing business and throw said corporation into bankruptcy, by lawfully enjoining said plaintiff from operating its Richmond plant which was just built and completed during September, 1933, at an approximate investment of Sixty-Five ($65,000.00) Thousand Dollars.

XXI

That plaintiff during the 1933-1934 open season, beginning August 1, 1933 and ending February 15, 1934, purchased from fishermen, sardines caught outside of the three

mile limit of the boundary of the State of California, and upon the high seas, and manufactured a product fit for and used only for human consumption from said sardines at its plant located at Point San Pablo, Richmond, California. That said product manufactured from the said sardines purchased from fishermen, who had an absolute property right in said sardines caught upon the high seas, was all sold and shipped in Interstate and Foreign Commerce, and at no time was the said commodity, or sardines, intermingled with the intrastate commerce of the State of California.

That the supply of sardines furnished to plaintiff's plant and the commodity manufactured therefrom, were not taken from the waters of the State of California, and was all intended for the interstate and foreign business of the Bayside Fish Flour Company, plaintiff herein and, if prevented in the future from obtaining such sardines, caught upon the high seas and beyond the jurisdiction and control of the State of California, and further prevented from manufacturing a product for use as human consumption from said sardines, the business of plaintiff will be totally destroyed and its plant will be of no value.

XXII

There is located within the boundaries of the State of California approximately twenty sardine canning com- [fol. 18] panies using sardines purchased from the same class of fishermen supplying plaintiff's manufacturing plant in the manufacture of a product for human consumption and that practically all of said product is shipped out of the State of California in interstate and foreign commerce, to wit: between ninety-five (95%) percent and ninety-seven and one-half (97½%) percent. That the plaintiff is the only company manufacturing fish flour for use for human consumption, and all of plaintiff's commodity is shipped out of the State of California and in foreign and interstate commerce.

XXIII

That the twenty canning companies putting up sardines in one pound oval cans prepare their meat for canning by cutting off the heads and tails of said sardines which heads, tails and other offal is manufactured into fish meal and fertilizer of which approximately fifty percent is shipped out of the State of California in foreign and interstate com-

merce. That plaintiff, through a patented process, U. S. Letters Patent No. 1,501,775, dated July 15, 1924, (Copy of which is attached hereto and made a part hereof and marked Exhibit "C") also eliminates all deleterious matter from said sardines and uses said offal in the manufacture of fish meal for other than human consumption and ships fifty per-cent of said fish meal, not fit for human consumption, in foreign and interstate commerce. That the said canning companies also manufacture a fish oil from the sardines purchased by them and ships approximately seventy-five (75%) percent of said fish oil out of the State of California and in foreign and interstate commerce, and plaintiff also ships approximately seventy-five (75%) percent of its fish oil in foreign and interstate commerce.

XXIV

That for a great number of years, or approximately from the year 1915 to date sardines have been taken from the waters of the State of California and from the high seas [fol. 19] contiguous thereto and to date there are no signs of depl*a*tion, and all of the commodities manufactured from said sardines have been, and now are, shipped and used in foreign and interstate commerce and that only a negligible amount of the commodities manufactured by said sardine canners are consumed within the State of California.

XXV

That the sardine Reduction Act, or the General Commercial Regulations, Article 4, Sections 1060 and 1077 inclusive, of the Fish and Game Code, effective August 21, 1933, Chapter 73 "An act to establish a Fish and Game Code, therein revising and consolidating the law relating to fish and game and other wild life, and repealing certain provisions of law therein specified", is a subterfuge and not an Act designed for the purpose of conserving the sardines caught within the boundaries of the State of California, or brought within the State of California, from the high seas and beyond the three mile limit of the State of California, but said Act is designed wholly for the purpose of limiting the use of said sardines for canners of one pound oval cans and prohibiting the use of sardines by other manufacturers of food products from said sardines and for the particular purpose of discriminating in favor of said one pound oval

mnaufacturers. That there is no limitation on the amount of sardines that the one pound oval canners may take from the fisheries of the State of California, and that during the last two open sardine canning seasons, 1932-33 and 1933-34, to and including February 15th, the one pound oval canners took 468,677 tons of sardines from the fisheries of the State of California, and they only used 67,090 tons of sardines in the manufacture of a food product put up in one pound oval cans and that they actually used 401,577 tons of sardines to manufacture their by-products (See Exhibit "D" attached hereto and made a part hereof).

[fol. 20]

XXVI

Notwithstanding plaintiff's willingness to pay all charges, licenses and taxes lawfully imposed and to comply with all other valid rules, regulations or requirements, defendants if not enjoined will prevent plaintiff from taking or acquiring during the open season when sardines are permitted to be taken from the waters of the State of California, sardines taken and/or caught upon the high seas beyond the jurisdiction of the State of California, to plaintiff's great and irreparable loss.

XXVII

Plaintiff further alleges that the construction as placed by defendants upon the laws of the State of California, to wit: "An act to establish a Fish and Game Code, therein revising and consolidating the law relating to fish and game and other wild life, and repealing certain provisions of law therein specified," effective August 21, 1933, and the several subdivisions of Article 4, General Commercial Regulations, by which they seek to prevent, and to prevent, the plaintiff from purchasing sardines from fishermen who catch said sardines on the high seas of the Pacific Ocean and beyond the three mile limit of the State of California, and after the purchase thereof, using said sardines in the manufacture of a product for use only for human consumption and after said manufacture shipping all of said commodity in foreign and interstate commerce, and permitting one pound oval canners the right to take and use, with limitation, sardines to put in tin cans and shipping them in foreign and

interstate commerce, is arbitrary, class legislation and unreasonable and in violation of the Commerce Clause of the Constitution of the United States, to wit: Article 1, Section VIII, Clause 3.

XXVIII

Plaintiff further alleges that great and irreparable injury will result to plaintiff unless a restraining order be granted [fol. 21] without notice to defendants enjoining the defendants and each of them, their agents and servants from interfering with the lawful conduct of plaintiff's business as aforesaid, pending the further order of this court.

XXIX

That plaintiff is without any adequate remedy at law for the grievances, wrongs and injuries so practiced upon it and threatened to be practiced upon it by the defendants as hereinbefore mentioned and are and will be entirely remediless without the equitable interposition of this Honorable Court.

Wherefore, plaintiff prays judgment:

(1) That said defendants and their officers and agents, and each of them, be restrained by injunction from interfering with the lawful contracting for and purchasing of sardines during the open season in the State of California, lawfully caught by fishermen on the high seas of the Pacific Ocean and beyond the three mile limit of the State of California, and be enjoined from stopping this plaintiff from using said sardines in the manufacture of a product for use for human consumption, to wit, fish flour manufactured from said sardines so lawfully caught by fishermen and sold to this plaintiff, and that defendants be further enjoined from making or filing any criminal complaint or enforcing and/or issuing any restraining orders or injunctions prohibiting the operation of said manufacturing plant at Point San Pablo, Richmond, Contra Costa County, California, and interfering with the lawful pursuit of plaintiff's business as aforesaid.

(2) That a temporary restraining order be granted unto plaintiff without notice to defendants enjoining the defendants and each of them and their employees and servants,

from interfering with the lawful purchase of sardines caught by fishermen on the high seas over those portions of the Pacific Ocean beyond the three mile limit of the [fol. 22] State of California; and from enjoining or enforcing any restraining order or temporary injunction against said plaintiff from taking and using said sardines in the manufacture of a product, to wit, fish flour for human consumption out of fresh sardines so lawfully purchased and caught during the open season and that said defendants and each of them be further enjoined from making or filing any criminal complaint or issue any warrant of arrest, or arresting plaintiff, or any of its agents, servants and employees and enforcing any restraining order or injunction prohibiting the plaintiff in the conduct or lawful pursuit of its business as aforesaid.

(3) That in addition to the matters and things prayed for in this bill of complaint that Honorable — —, United States District Judge, presiding in the above entitled court, to which said court the above entitled cause is duly and regularly assigned for hearing and disposition immediately call to his assistance to hear and determine the application for an interlocutory or preliminary injunction two other judges as required by the provisions of Section 266 of the Judicial Code, U. S. C. Title 28, Section 380.

(4) For such other and further relief as to the court may deem just and equitable.

Roy Daily, Attorney for Plaintiff.

[fol. 23] *Duly sworn to by G. Worrall. Jurat omitted in printing.*

[fol. 24] EXHIBIT "A" TO BILL OF COMPLAINT

Fish and Game Code

Article 4. General Commercial Regulations.

1060. As used in this article:

(a) "Reduction plant" means any plant used in the reduction of fish into fish flour, fish meal, fish scrap, fertilizer, fish oil or other fishery products or by-products.

(b) "Packer" means any person canning fish or preserving fish by the common methods of drying, salting, pickling or smoking.

(c) "Fish offal" means the heads, viscera, and other parts of fish taken off in preparing for canning or preserving.

1061. The commission may regulate and control fishing boats, barges, lighters or tenders, receptacles or vehicles containing fish, commercial fishermen, packers, reduction plants, plants where fish products are manufactured, and dealers in fish, mollusks, or crustaceans, or fishery products, in so far as necessary to insure the taking and delivery of fish and fishery products in a wholesome and sanitary condition to canning, packing or preserving plants, or to any plant where fishery products are manufactured, or to any fresh fish dealer, and to prevent deterioration and waste of fish.

1062. The commission may enter and examine any canning, packing, preserving or reduction plant, or place of business where fish or other fishery products are packed, preserved, manufactuerd, bought or sold, or any fishing boat, barge, lighter, tender, or vehicle or receptacle containing fish, and ascertain the amount of fish received, or kind and amount of fishery products packed or manufactured and the number and size of containers or cans for fishery products purchased, received, used, or on hand.

1063. The commission may establish grades for different varieties of fish or fishery products, which grades must be conformed to be fishermen who deliver fish or other fishery products to packers or to fresh fish dealers. Every packer of fish, or fish dealer, or manufacturer of fish products, must conform to the grades established by the commission.

1064. It is unlawful to cause or permit any deterioration or waste of any fish taken in the waters of this State, or brought into this State, or to take, receive or agree to receive more fish than can be used without deterioration, waste or spoilage. Except as allowed by this code, it is unlawful to use any fish, or part thereof, except fish offal, in a reduction plant or by a reduction process.

1065. Sardines may be taken for use in a reduction plant, or by a packer, only in accordance with the provisions of

this article, as follows: In districts 4, 4¾, 18, 19, 20, 20A, and 21 between November 1 and March 31; elsewhere in the State between August 1 and February 15. This section does not prohibit the taking of sardines for the purpose of salting, curing, smoking or drying or for the purpose of packing in cans commonly known as quarter-pound or [fol. 25] square cans less than 10 ounces in net weight; provided, that in a ten-ounce can, fish of a size of not less than eight fish to the can may be used, and there shall be added to the commonly known quarter-pound can not less than one ounce of olive oil or a commercial salad oil, and a proportionately larger amount of such oil to the larger sizes of cans. (Amended by Ch. 706, Stats. 1933.)

(Original Section)

1065. Sardines may be taken for use in a reduction plant, or by a packer, only in accordance with the provisions of this article, as follows: In districts 4, 4¾, 18, 19, 20, 20A and 21, between November 1 and March 31; elsewhere in the State between August 1 and February 15. This section does not prohibit the taking of sardines for the purpose of packing in cans commonly known as quarter pound or square cans less than a half pound in net weight.

1066. Any person engaged in canning sardines may take and use in a reduction plant thirty-two and one-half per cent of the amount of sardines actually received at such canning plant during each calendar month.

1067. In determining percentage of sardines used for reduction purposes by canneries it shall be deemed that a ton of sardines suitable in size and condition for canning will produce 960 one-pound oval cans of sardines, or the equivalent if other size cans are used.

1068. The commission may grant a revocable permit, subject to such restrictions, rules or regulations as the commission may prescribe, to take and use fish by a reduction or extraction process. No reduction of fish shall be permitted which may tend to deplete the species, or result in waste or deterioration of fish. (Amended by Ch. 706, Stats. 1933.)

(Original Section)

1068. The commission may grant a revocable permit, subject to such restrictions, rules or regulations as the com-

mission may prescribe, to take and use fish by a reduction or extraction process for the manufacture of edible products fit for and intended to be used for human consumption. No reduction of fish shall be permitted which may tend to deplete the species, or result in waste or deterioration of fish.

1069. Repealed by Ch. 467, Stats. 1933.

(Original Section)

1069. No reduction permit shall be granted unless at least fifty per cent of the wet weight of the whole round fish or all of the oil extracted from such fish is manufactured within this State into products fit for and intended to be used for human consumption.

1070. Persons engaged in preserving sardines by the common methods of drying, salting, smoking or pickling may use in a reduction plant or by reduction process such sardines, or fish delivered mixed with sardines, as are unfit for drying, salting, smoking or pickling, which are not intentionally taken into the plant in a condition unfit for processing for human consumption.

1071. Fish which are mixed with sardines when delivered to the packer are the equivalent of sardines and in- [fol. 26] cluded with the percentage of the total amount of sardines received by the packer during the calendar month.

1072. All chutes or conveyors used to convey fish or fish offal to any receptacle, and all receptacles containing fish or fish offal to be used for reduction purposes, must be so constructed and maintained that the fish or fish offal thereon or therein is at all times open to view and inspection.

1073. Each packer must, on or before the fifth day of each calendar month, file with the commission a written report, under oath, on such form as may be prescribed by the commission, containing a statement of the amount of fish received at each of his plants during the preceding calendar month. The report must also state the amount of fish packed and the number and size of the containers of fish, fishery products and by products packed, produced or reduced at each plant during said preceding calendar month.

1074. A written complaint may be made to the commission against any person who violates any of the provisions of this article, or any regulation made thereunder, by any person having information or knowledge of such a violation. The complaint must be filed with the commission and shall set forth the particular offense alleged to have been committed. A copy thereof must be served on the alleged offender, together with a notice setting forth the time and place of hearing. The hearing must be held in the county in which the violation is alleged to have been committed. The person charged must answer the complaint, in person or by attorney, within five days after notice has been served upon him. If the person charged fails to answer or denies the charge, the hearing shall be conducted by the commission. If the person charged is found guilty of the offense charged, the commission may suspend for a period not to exceed ninety days any license issued by any State board or officer to such person to take, buy, sell, can or preserve fish or fishery products. No other license shall be issued to such person during such period of suspension.

1075. The commission or any person appointed by it to conduct a hearing may, in any investigation or hearing held under the provisions of this article, cause the deposition of witnesses, residing within or without the State, to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this State, and may compel the attendance of witnesses and the production of documents and papers.

1076. Any reduction plant in which any fish or any part thereof is used in violation of the provisions of this article, or in violation of any rule, regulation or order of the commission, is a nuisance. Whenever the existence of such nuisance is shown to the satisfaction of the superior court of the county in which the reduction plant is situated, by complaint filed in the name of the people of the State of California, the court may issue a temporary injunction to abate and prevent the continuance or recurrence of such nuisance. If the existence of a nuisance is established in an action, as provided herein, an order of abatement shall be entered as part of the judgment in the case, which order shall direct the closing, for twelve months, of the building

or place where such nuisance was maintained, and, during such time, said building or place shall be and remain in the custody of the court.

1077. The commission may make and enforce such regulations as may be necessary or convenient for carrying out any power, authority or jurisdiction conferred under this article.

[fol. 27] 1410. The commission of any act declared by this code to be unlawful, or the violation of any provision of this code or of any rule or regulation made thereunder, unless otherwise provided herein, is a misdemeanor, and is punishable by a fine of not more than five hundred dollars, or by imprisonment in the county jail for not to exceed six months, or by both.

458. It is unlawful to transport or carry out of this State any deer or game bird, or parts thereof, except when transported for scientific or propagation purposes under a written permit issued by the commission.

[fol. 28] EXHIBIT "B" TO BILL OF COMPLAINT

Value, $5.00 No. 138

This License Expires June 30, 1934

Citizen Fish Packers and Wholesale Shell-Fish Dealers License

Having paid the amount required by law, license is hereby granted to

Bayside Fish Flour Company,

Street and No: 625 Market. City: San Francisco,

to can, cure, preserve or pack fish which are taken in the waters of this State, or fish brought into this State in a fresh condition, or to manufacture fish-scrap, fish-meal, fish-oil, chicken-feed or fertilizer from fish or fish offal, or to deal in mollusks or crustaceans by wholesale.

Ray L. Riley, State Controller.

Countersigned:

J. Dale Gentry, President Fish and Game Commission.

Issued by J. J. S. at S. F. Office, on Aug. 30, 1933.

(Here follows photolithograph, side folio 29.)

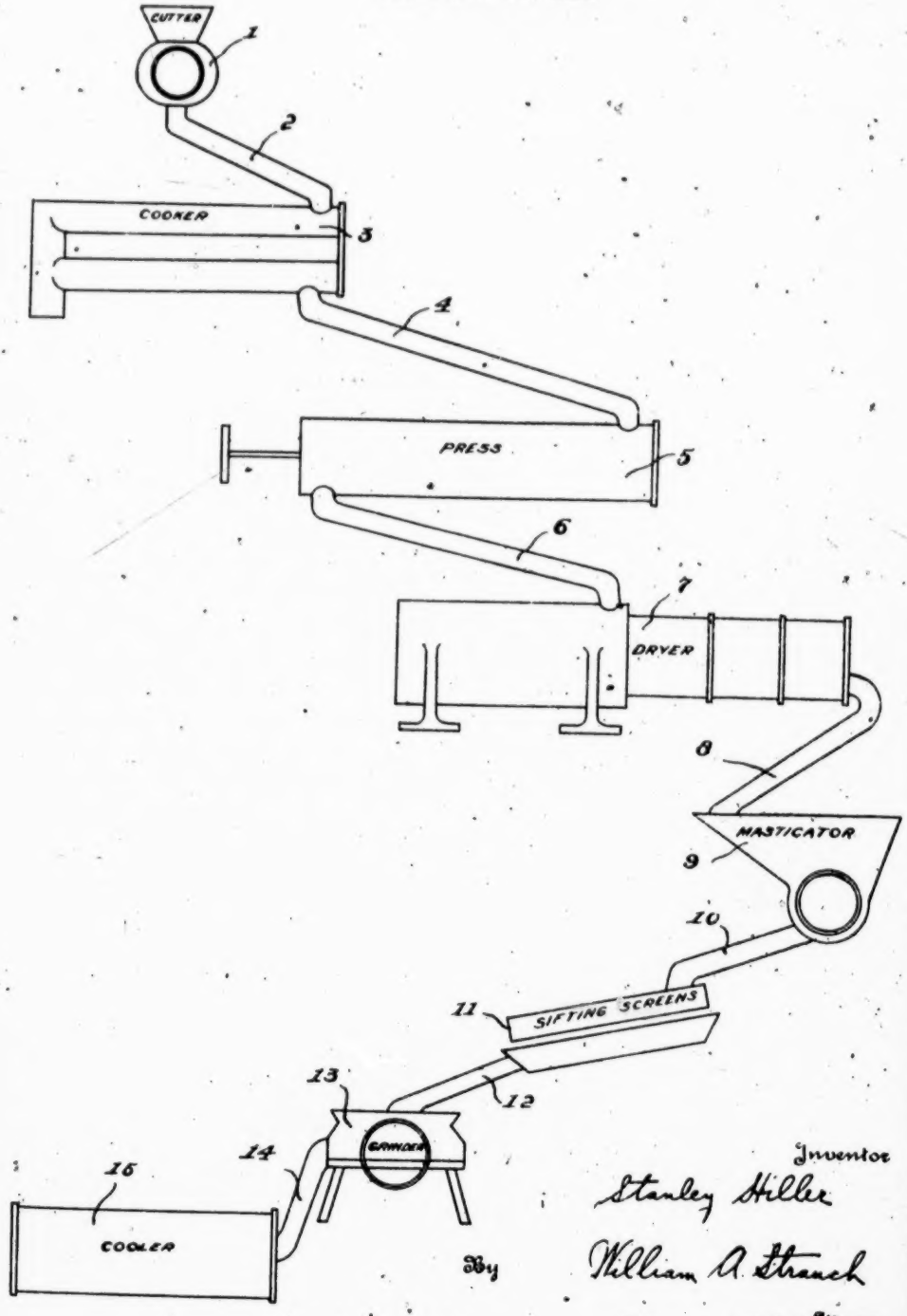
EXHIBIT "C" TO BILL OF COMPLAINT 24A

July 15, 1924. 1,501,775

S. HILLER

PROCESS FOR THE MANUFACTURE OF HIGH GRADE FLOURS FROM FISH AND LIKE MATERIALS

Filed Jan. 14, 1924



Inventor
Stanley Hiller

By William A. Stranch

29 275-1 Attorney

Patented July 15, 1924. 1,501,775

UNITED STATES PATENT OFFICE.

STANLEY HILLER, OF SAN JOSE, CALIFORNIA, ASSIGNOR TO ROY L. DAILY, OF SAN FRANCISCO, CALIFORNIA; R. B. BELLINGALL, OF OAKLAND, CALIFORNIA; AND STANLEY HILLER, OF SAN JOSE, CALIFORNIA.

PROCESS FOR THE MANUFACTURE OF HIGH-GRADE FLOURS FROM FISH AND LIKE MATERIALS.

Application filed January 14, 1924. Serial No. 686,136.

To all whom it may concern:

Be it known that I, STANLEY HILLER, a citizen of the United States, and a resident of San Jose, county of Santa Clara, State of California, have invented certain new and useful Improvements in Processes for the Manufacture of High-Grade Flours from Fish and like Materials, of which the following is a specification.

The present invention relates to improved processes for the manufacture of high grade flours from fish and like materials.

More particularly the invention relates to improvements in processes of the character described by which a food fit for human consumption may be produced.

Heretofore meal from fish, fish waste and like oil bearing materials has been produced by first extracting the oils and thereafter drying and grinding the residue. Such meals have, however, been of a quality unfit for human consumption and have been usable only as fertilizers and cattle food. In particular fish meals heretofore produced have had a percentage of bone content so high that the meal would be highly injurious if used as a food for human beings.

I have discovered that it is possible to effect a commercially satisfactory and practical separation of the bone content in fish or other bone bearing materials of the character described with the result that a flour may be produced which is of high protein content and valuable as food for human beings.

The success of the separation depends to a large extent upon the manner of treating the meal in production thereof. However, the manner of treatment may vary widely as will appear more fully hereinafter.

The main feature of the invention may be said to comprise the preparation of a meal of such quality that the bone remains in more or less appreciable sections or lengths which may be so treated as to remove the flesh portion easily from the pieces of bone; and at the same time or thereafter, reducing or breaking the flesh from the bone. After the breaking of the flesh content the mass is then passed over a set of sifting screens to separate the dried flesh and bone, or may be passed through chambers for separating the flesh from the bone by an air flotation process, or otherwise.

The accompanying drawing shows in diagram the apparatus and general arrangement thereof as used in commercial practice to carry out one form of the invention. It is to be understood however that many other arrangements may be utilized. In the preferred forms the invention is carried out in continuous manner, but it is also applicable to batch processes.

In carrying out the invention, the fish are first preferably cleaned, the heads and other parts cut off, and the entrails removed. This preliminary cleaning and treatment, however, is not essential and may be dispensed with in certain cases, as for example in handling certain kinds of fish. The fish is then fed into a cutter 1, which is in practice of the commonly known meat grinder type, but may be of any well known form for reducing and cutting the fish into relatively small parts. From the cutter the fish is carried by means of a conveyor 2, or otherwise, and delivered into a cooker 3. The mass is then cooked, under pressure, to break down the oil cells. In practice material is fed from the cutter continuously and under cover to the cooker, and is continuously passed through the pressure cooker. From the cooker the cooked material is passed through a conveyor or otherwise to a press (5) where the greater proportion of oil and water is extracted by pressure.

In practice the material is passed from the cooker to the press continuously under cover, and while hot. The material also passes continually through the press, and as a result of pressing the material while hot a greater efficiency of extraction of the oils results. From the press the material passes through passage (6) or otherwise to a dryer (7) and is therein thoroughly dried in a manner to prevent burning or otherwise tainting the taste of the meal. In practical operation the feed from the press to the dryer is continuous and under cover, and the passage through the dryer is continuous, drying being carried out in direct contact with the gases of combustion.

The volume of air supplied to the combustion chamber and the arrangement of the chamber is such, however, that complete combustion of the fuel supply occurs and the temperature of the mixture of air and gases is maintained at a point to cause drying of the pressed material without burning. In this manner, efficient and thorough drying of the material is carried out in direct contact with the products of combustion, but without causing any appreciable degree of taint affecting the taste of the dried material.

From the dryer, the thoroughly dried and preferably hot material is conveyed through (8) or otherwise, preferably in continuous manner and under cover, to a masticator (9). Masticator (9) is preferably of any well known type such for example as is used on farms and as manufactured by the International Harvester Company, and comprises a series of rotating dogs which act on the dry material to break up the dry flesh portion thereof and to separate it from the bone. The bone being hard and the flesh being thoroughly dry and more or less brittle, the result of the mastication is that the flesh is separated and reduced to relatively fine particles while the bone remains in relatively large particles. It will be understood that any treatment which produces this result may be used to replace the masticator described, and that although greater efficiency is attained in mastication while the material is hot because greater dryness is assured, so long as the result described is effected the condition of the material during the operation may differ widely within the scope of the invention.

Having passed through the masticator, the dry and preferably hot mixture of fine dry flesh content and relatively coarse bone content is treated to effect a sufficient separation of the bone and flesh so that the flesh becomes usable as food for human consumption. This treatment or step may be carried out in different ways, and although preferably carried out while the material is hot for greater efficiency, so long as the separation is effected the condition of the material may vary widely in this respect and also with respect to the degree of dryness maintained.

The material is passed preferably under cover and continuously through (10) or otherwise to separating means (11). In practice (11) comprises shaking or rotary screens of a mesh which permits the major part of flesh portions to pass therethrough and prevents the passage of the major part of the bone. In practical operation a 20-mesh screen is utilized. The screens are pitched downward from the feed end so that the material is advanced there-across and is then passed from the screens where it may be further treated and sacked to be used as fertilizer, being substantially composed of the bone content.

The sifted flesh content is collected beneath the screens and is passed through (12) or otherwise to a grinder (13), where it is reduced to a flour. The sifting and grinding operations are preferably continuous and carried out under cover to avoid loss of material, and to maintain the material as far as possible in warm or heated condition, in this manner contributing to the commercial success and efficiency of the process.

The invention may however, be carried out in discontinuous manner and as a batch process, without the covering to avoid waste and to maintain the heated condition of the material.

The sifting screens may be replaced by means for introducing the meal from the masticator into a device for separating the flesh content from the bone by means of air currents or air flotation. In this form of separator the difference in density of the relatively fine flesh particles and the relatively coarse bone is utilized to effect the separation.

From this separator the flesh portion is also passed to a grinder and reduced to flour. In the preferred embodiment, the flesh part is sifted and ground while hot and the material is passed from the grinder through passage (14) or otherwise, to a cooler (15) where it is cooled to the point of permitting immediate sacking or other packing for shipment.

It will be understood that for handling large quantities of material rapidly and at a minimum cost, a continuous plant is provided. For smaller quantities, the invention may be carried out as a discontinuous or batch process. The arrangement for handling the material while hot and maintaining the material covered, at least until drying is completed, prevent offensive odors and rapid deterioration of the material during the treatment, in addition to increasing the economy of operation and efficiency of the apparatus. After the material has been dried there is found in practice no tendency toward rapid deterioration, and no offensive odors are emitted. Covering of the material from this point on to prevent contact with the air serves however, to keep it hot and thoroughly dry, thereby increasing the efficiency of the mastication, sifting or other separation apparatus, and the final grinding into flour.

It will be understood that by bringing the various apparatus into close relation, conveyors may be largely eliminated and gravity feed arrangements may be utilized, in which event the covering may be to some extent removed if desired, without mate-

rially lowering the temperature of the materials in the various stages. It is to be understood that the arrangements of apparatus for conveying the materials will depend largely on the design of the plant used and may accordingly be varied widely according to the choice made and well within the range of ordinary engineering skill.

Having described preferred embodiments of the invention, what is desired to be secured by Letters Patent and claimed as new is:

1. A process for manufacturing fish flour which comprises cutting the fish; cooking the fish under pressure; pressing the cooked fish to extract the oil therefrom; drying the solid residue from the press; masticating the dried material without substantially reducing the size of the bone particles whereby the flesh is broken from the bone; and treating the masticated material to remove the major portion of the bone content therefrom.

2. A process for manufacturing fish flour which comprises cutting the fish into relatively small particles; cooking the cut fish; pressing the cooked fish to extract the oil therefrom; drying the solid residue from the press; treating the dried material in a manner to break the flesh content from the bone without materially reducing the size of the bone particles; and separating the flesh content from the bone content.

3. A continuous process for manufacturing high grade fish flour which comprises the steps of cutting fresh fish to relatively small particles; cooking the freshly cut fish; pressing the cooked fish while hot to extract the oil therefrom; drying the solid residue from the press by the application of heat thereto; treating the dried material while hot to break the flesh portion from the bone without materially reducing the size of the bone particles; separating the flesh content from the bone by sifting; and grinding the separated flesh content to produce flour.

STANLEY HILLER.

[fol. 30]

EXHIBIT "D" TO BILL OF COMPLAINT

Sardines Taken by Canners and Use Made Thereof

Compiled from Statistical Report Prepared by California Fish and Game Commission

	Tons of sardines taken	Tons actually used for canning	Tons into offal, heads and tails	Tons used under 32½%, Sec. 1066	Tons used under permits, Sec. 1068	Tons used by canners for non-edible
1933–34 Season 2/15.....	284,566	46,658	46,657	44,929	146,322	237,908
1932–33 Season 2/15.....	184,101	20,432	20,765	19,567	123,337	163,669
	468,667	67,090	67,422	64,496	269,659	401,577

Only 14.3% of sardines taken by one-pound oval canners was used to manufacture a food product and 85.7% was used for straight reduction purposes.

[File endorsement omitted.]

[fol. 31] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF R. L. DAILY ON BEHALF OF PLAINTIFF IN SUPPORT OF PRELIMINARY INJUNCTION—Filed May 12, 1934

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

R. L. Daily, being first duly sworn, deposes and says:

That he is an attorney at law licensed to practice law within the State of California, and as such attorney has represented the Bayside Fish Flour Company in that capacity continuously from the year 1924 to date. That also, during part of that period of time, he has been an officer, director and stockholder of said company and is thoroughly familiar with the business and plants of the said Bayside Fish Flour Company.

That he is one of the owners of U. S. Letters Patent No. 150775, dated July 15, 1924, issued by the United States Patent Office, which is a process patent for manufacturing fish flour for human consumption out of sardines. That the said Bayside Fish Flour Company is operating under said patent and has been operating under said patent since the date of issue during the year 1924. That he has studied and is thoroughly familiar with what is termed in the California laws as the Sardine Reduction Act, the alleged object [fol. 32] of which act was to conserve the sardines of the State of California for the use and benefit of the People of the State of California for food purposes. That under the act existent during the year 1925 it was necessary for the said plaintiff to procure a permit from the Fish and Game Commission to manufacture by reduction process fish flour for human consumption, and that he represented the said plaintiff at the hearing held by the Fish and Game Commission of the State of California, who issued a permit to plaintiff for the purpose of using sardines to manufacture fish flour for human consumption. That testimony, both oral and written, was furnishel to the Fish and Game Commission, acting as a quasi judicial body, and said Commission found that the fish flour manufactured by this plaintiff is fit for human consumption and will in fact be used for human consumption. That thereafter, every

year, this plaintiff, under the then existing acts, filed applications with the Fish and Game Commission and said Commission continuously found, from evidence introduced before it, that the plaintiff was manufacturing a product fit for and used for human consumption. That in addition to the documentary evidence furnished to the Fish and Game Commission, consisting of affidavits of use as well as other documentary evidence, the Commission itself made numerous investigations in Europe through the American Counsels and foreign Counsels and in each and every instance the evidence furnished to them as a result of their independent investigation disclosed the fact that the product manufactured by plaintiff was all used for human consumption. The Department of Pure Foods of the State of California also made independent investigations for and on behalf of the Fish and Game Commission, and they also sustained the Findings of Fact found by the said Commission, to the effect that the product manufactured by the plaintiff was fit for use for human consumption, and over a period of ten years, after many independent investigations, the Fish and Game Commission have never found that the [fol. 33] plaintiff's product is not fit for use, intended for use or in fact used for human consumption. That during the year 1930, on October 27th, the People of the State of California filed an action in the Superior Court of the County of Monterey against this plaintiff, said action being numbered 12351, alleging that this plaintiff was conducting a reduction plant and was not a packer as was defined in the then existing laws. Said definitions of the act at that time reading as follows:

"Reduction plant means any plant used in the reduction of fish into fish flour, fish meal, fish scrap, fertilizer, fish oil or other fishery products or by-products.

Packer means any person canning fish or preserving fish by the common methods of drying, salting, pickling or smoking."

That the definition of "reduction plant" and "packer" in the now existing act is the same as was in the act and referred to in the proceedings in the County of Monterey, and in that proceeding Judge H. G. Jorgenson, Superior Judge, found in his Findings of Fact and Conclusions of Law that the said plant where fish flour was manufactured

by this plaintiff was not a reduction plant and also that the said plaintiff was a packer as defined in the reduction act of the State of California. Said Findings of Fact and Conclusions of Law and judgment were entered on January 12, 1931.

That on the strength of this Finding of Fact and Conclusions of Law, which case was not appealed by the State of California and became final between the parties thereto, this plaintiff then entered into contracts to purchase machinery and lease a building at Point San Pablo, Richmond, California, for the construction of a new plant, which plant was completed and began operations during the month of September, 1933, at an approximate cost of Sixty-Five Thousand ($65,000.00) Dollars for machinery, equipment and leases. Said company having been advised by affiant that the questions between the People of the State of California and this plaintiff were res adjudicata as to the Monterey plant, and that said decision would be tantamount to [fol. 34] stare decisis or equivalent to a rule of property, and upon such advice from affiant the above new investment was made and factory built and operated. Affiant is personally familiar with the mode of manufacturing or processing sardines in one pound oval cans by the sardine canners of the State of California, and the methods used by such cannners in using the sardine reduction plant as a subterfuge for the purpose of taking sardines for reduction purposes only. That the following table is the table used by practically all of the cannners within the State of California and approved by the Fish and Game Commission.

They use — a basis a 2,000 pound per ton wet weight figure to begin with.

One ton sardines 2,000 pounds.

32½% under Section 1066, which is 650 pounds.

Balance after percentage deducted	1,350 pounds
Cutting away heads and tails 50%	675 pounds
Balance to be processed for canning	675 pounds

There is contained in a one pound can of sardines only 13 ounces of sardines and two ounces of tomato sauce, or whatever other sauce is used. The sardine canners are only packing 13.5 cases of sardines per ton. (See report of Fish and Game Commission dated February 14, 1934, attached hereto and marked Exhibit "A").

Thus, using this basis of computation, out of every raw ton of fish taken by the one-pound oval canner, only 526½ pounds goes into food for human consumption, the balance of the moisture content of the fish being divided into water which goes up into steam and oil, which goes into the by-products manufactured by the sardine canner, or on a wet weight basis for each ton received by the canner 1,325 pounds is used to manufacture by-products and 675 pounds is used to manufacture the food products.

The one-pound oval canner also this year was granted by the Fish and Game Commission an additional 6,000 tons [fol. 35] of sardines to go into products for other than human consumption.

During the open season 1932-33 the one-pound oval sardine canners received 184,101 tons of raw sardines. They only used for canning 20,432 tons. Thereby, under the subterfuge and guise of the reduction act, they used 163,669 tons of sardines to manufacture products for other than human consumption, or practically eighty-nine per cent of all of the sardines taken by the one-pound oval canning processors was used by them to manufacture products for other than human consumption, and a similar state of facts has existed for the past ten years in the construction and enforcement of this conservation act by the Fish and Game Commission of the State of California.

In addition to the offal tonnage and percentage allowance and reduction permits issued to the one-pound oval canners during the 1933-34 season, affiant has been informed and upon such information and belief states that the Fish and Game Commission permitted the various canners to transfer tonnage back and forth between themselves from canners who did not use the full 6,000 tons allowed them under additional permits, and the Fish and Game Commission refused to permit the Pittsburg canners to transfer to the Bayside Fish Flour Company at their Richmond plant tonnage in a similar manner permitted between one-pound oval sardine canners.

As a result of a Restraining Order obtained by the Fish and Game Commission against this plaintiff in Contra Costa County against its Richmond plant, the credit of such plant has been impaired to such an extent that it is impossible to meet its present existing obligations, because of its inability to secure commercial credit, and that if this re-

straining order remains upon the plant it will force this plaintiff into bankruptcy and completely destroy the business of its Richmond plant. That before the next operating season, beginning on August 1, 1934, it becomes neces-
[fol. 36] sary for this plaintiff to make contracts with fishermen, contracts to sell their output and expend money in placing the plant in condition for operation for next season, amounting to approximately five or ten thousand dollars, and unless the defendants are restrained from interfering with this plaintiff, this said plaintiff will be irreparably damaged to such an extent that it can never recover therefrom, because the People of the State of California do not have to put up a bond to reimburse this plaintiff for any damage or loss it might incur in connection with the injunction requested by them. In addition to the foregoing damage, this plaintiff has built up a good will in Europe for the sale of its commodity and has expended several thousands of dollars, to wit, approximately Twenty-Five Thousand ($25,000.00) Dollars, in building up said good will, and if there is a discontinuance of the business, it is affiant's belief that the plaintiff will lose all of said European connections which loss cannot be restored to it.

That plaintiff uses 37½% of all the sardines received by it in the manufacture of a food product and only 62½% of the raw fish, consisting of the offal and deleterious matter, is used in the manufacture of by-products for use for other than human consumption.

(Sgd.) Roy Daily.

Subscribed and sworn to before me this 1st day of May, 1934.

(Sgd.) C. R. Holton, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[fol. 37] EXHIBIT "A" TO AFFIDAVIT

State of California

Department of Natural Resources

Division of Fish and Game

San Francisco

February 14, 1934.

To Sardine Canners of California:

During the month of January, 1934, 35,081 tons of sardines were delivered to canneries and reduction plants at Monterey, Richmond, Benicia and Pittsburg. 186,968 cases of 1# oval cans and 23,215 cases of other size cans equivalent to 23,646 cases of 1# oval cans were packed. 5,099 tons of meal and 1,172,333 gallons of oil were produced. In the same district, for this season to January 31, 160,035 tons of sardines have been delivered to shore plants; 848,193 cases of 1# ovals and 105,129 cases of other size cans equivalent to 108,426 cases of 1# ovals were packed; 23,201 tons of meal and 5,202,552 gallons of oil were produced.

In the San Pedro district during January, 21,626 tons of sardines were delivered, 81,667 cases of 1# oval cans and 78,441 cases of other size cans equivalent to 77,023 cases of 1# oval cans were packed; 3,375 tons of meal and 503,317 gallons of oil were produced. In the same district for the season to January 31, 67,162 tons of sardines were delivered, 245,866 cases of 1# oval cans and 160,037 cases of other size cans equivalent to 160,246 cases of 1# oval cans were packed; 10,679 tons of meal and 1,761,516 gallons of oil were produced.

For the season to January 31 in Monterey and Northern California 71,031 tons were used for canning purposes, 88,896 tons for manufacture of oil and meal by reduction process and 108 tons for salting and pickling. In the San Pedro district to January 31, 29,177 tons were used for canning and 37,985 tons were used by reduction process for manufacture of oil and meal.

Following is the record of case pack per ton of fish received at canneries which packed sardines in January:

Benicia Fisheries, Inc.,	Benicia	.046
F. E. Booth Co.,	Pittsburg	13.5
F. E. Booth Co.,	Monterey	13.5
California Packing Corporation,	"	13.5
Custom House Packing Corporation,	"	13.5
Del Mar Canning Corporation,	"	13.5
E. B. Gross Canning Co.,	"	13.5
Hovden Food Products Corporation,	"	13.5
Monterey Canning Co.,	"	13.5
San Carlos Canning Co.,	"	13.5
San Zavier Fish Packing Co.,	"	13.5
Sea Pride Packing Corp. Ltd.,	"	13.5
Coast Fishing Co.,	Wilmington	13.5
French Sardine Co.,	Terminal Island	13.5
Italian Food Products Co.,	Long Beach	13.6
Sea Pride Packing Corp. Ltd.,	Terminal I.	13.5
Southern California Fish Corp.,	"	41.00
Van Camp Sea Food Co. IP Plant,	"	13.5
Van Camp Sea Food Co. NK Plant,	"	15.7

S. D. Dado, Assistant, Bur. of Coml. Fisheries.

[File endorsement omitted.]

[fol. 38] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF EDWARD DAVID ON BEHALF OF PLAINTIFF IN SUPPORT OF PRELIMINARY INJUNCTION—Filed May 12, 1934

STATE OF CALIFORNIA,
County of Monterey, ss:

Edward David, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of Monterey, Monterey County, California, and is at present and has been for a period of more than five years, president of the Del Mar Canning Company, Monterey, California, engaged in the business of canning sardines; that in conjunction with the canning plant of the Del Mar Canning Company they have a reduction plant in operation which they use in connection with the by-products of such plant, to wit, fish meal, fish scrap, fish fertilizer and fish oil; that

said products so manufactured are now and always have been used only for purposes for other than human consumption; that he is familiar with all of the other canning plants located in Monterey and he knows of his own knowledge that they operate in a similar manner to the reduction plant operated by the Del Mar Canning Company, and that without exception all of said reduction plants manufacture [fol. 39] a product unfit for human consumption.

That affiant is familiar with the process used by the Bayside Fish Flour Company in the manufacture of its fish flour fit for use for human consumption. That the process used by the plaintiff is different than the process used by all of the reduction plants of the canning companies that affiant is familiar with, and that plaintiff is now and has been for the past ten years the only firm within the State of California that manufactures a product for human consumption from the meat of sardines and used to make a fish flour for use for human consumption, and that such process used by plaintiff is different than the process used by reduction plants in the manufacture of products not for human consumption.

That during the past five years that affiant has been connected with the sardine business, he estimates that practically all of the canned sardines, towit, about 90% of said sardines, are shipped outside of the State of California, and in interstate and foreign commerce, and that only a negligable part of said canned sardines are used by the People of the State of California, within the State of California.

That in the process or manufacture of canning one-pound oval cans the heads, tails and offal of the sardines are eliminated before processing or putting said sardines in one-pound oval cans. That all of the heads, tails and offal taken from the sardines are used by the canners in the manufacture of fish meal, fish scrap, fish fertilizer and fish oil. That in addition to said offal, the canners also take a percentage of their catch and run through their reduction plants in manufacturing a commodity for other than human consumption. That this percentage under the present act is thirty-two and one-half per cent of the total catch, and that of all the sardines caught and used by the canners of

the State of California more than fifty per cent goes to the [fol. 40] reduction plant of the canners and is used for purposes other than for human consumption, including offal, etc.

Edward David.

Subscribed and sworn to before me this 26th day of April, 1934.

John O. Thompson, Notary Public in and for the County of Monterey, State of California. (Seal.)

[File endorsement omitted.]

[fol. 41] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOSEPH G. GISLER ON BEHALF OF PLAINTIFF IN SUPPORT OF PRELIMINARY INJUNCTION—Filed May 12, 1934

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Joseph G. Gisler, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of the City and County of San Francisco, State of California, and that he is familiar with the fishing conditions existing in and around the Pacific Ocean three miles on the high seas of the Pacific Ocean and outside of the Golden Gate, San Francisco Bay, State of California; that he has particularly been engaged in the business of employing fishermen for the outside reduction plants and that in the operation of the business of the outside reduction plants for the manufacture of products other than human consumption there are employed numerous fishing boats fishing for sardines and delivering said sardines to the said outside reduction boats. That the Fish and Game Commission of the State of California operates a patrol to see that none of the fishermen fishing on the high seas for sardines fish within the waters of the State of California within three miles of the coast line. That this one patrol

boat is sufficient to police the said waters three miles out [fol. 42] from the coast of the State of California and it is a practicable thing for the Fish and Game Commission to patrol the waters and see that fishermen do not take sardines within the waters of the State of California.

That affiant knows of his own knowledge that the outside reduction plants have averaged during the past two years more than fifty thousand tons of sardines per year for the manufacturing of a product for other than human consumption, and that said product so manufactured is practically all brought within the State of California, and either used in the State or shipped out of the State of California.

Other than this affiant sayeth not.

(Sgd.) Jos. G. Gisler.

Subscribed and sworn to before me this 28th day of April, 1934.

(Sgd.) C. R. Holton. Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[File endorsement omitted.]

[fol. 43] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF JOHN R. GRIGG ON BEHALF OF PLAINTIFF IN SUPPORT OF PRELIMINARY INJUNCTION—Filed May 12, 1934

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

John R. Grigg, being first duly sworn, deposes and says:

That he is the president of the Pittsburg Canners, Inc., and for a period of more than ten years has been engaged in the sardine business; that in conjunction with the canning plant of the Pittsburg Canners, Inc., they have a reduction plant which they use in connection with the by-products of such plant, to wit, fish meal, fish scrap, fish fertilizer and fish oil; that said products so manufactured are now and always have been used only for purposes other

that human consumption; that he is familiar with other canning plants located in California and he knows of his own knowledge that they operate in a similar manner to the reduction plant operated by the Pittsburgh Canners, Inc., and to the best of his knowledge all of said reduction plants manufacture a product unfit for human consumption.

That affiant is familiar with the fish flour manufacturing plant of the plaintiff located at Point San Pablo, Rich- [fol. 44] mond, California, and said plant is used for the manufacture of a very fine fish flour which has extensive possibilities for use as a food product for human consumption; that the process used by the plaintiff for the manufacture of fish flour is a patented process and is not used in any of the plants of the canning companies that affiant is familiar with, and that plaintiff is now and has been for the past ten years the only firm within the State of California that, to the best of affiant's knowledge and belief, manufactures a fish flour product fit for human consumption.

That affiant is familiar with the fishing conditions off the coast of California at both Monterey and San Francisco Bay, and he knows of his own knowledge that the California Fish and Game Commission keeps a patrol boat off the three-mile limit of the State of California to ascertain how much fish are caught within the three-mile limit. That this one patrol boat has been doing this business for the past two years for the particular reason that there are now and have been what is termed floating reduction plants operating outside of the three-mile limit, taking and using approximately between fifty thousand and seventy thousand tons of sardines per year in the manufacture of a product for other than human consumption, and that said reduction ships bring their fish meal, fish scrap, fish fertilizer and fish oil within the State of California and sell the same and trans-ship the same out of the State of California.

That during the past ten years that affiant has been connected with the sardine business, to the best of his own knowledge, practically all of the canned sardines are shipped outside of the State of California, and in interstate and foreign commerce, and that only a negligible part of said canned sardines are used by the people of the State of California, within the State of California; to the best of

his knowledge that approximately one-half or fifty per cent of all fish meal manufactured by the sardine canners [fol. 45] in the State of California is shipped out of the State and is not used by or for the people of the State of California. That approximately seventy-five per cent of all of the fish oil manufactured out of the offal and percentage allowance allowed to canners is shipped out of the State of California and is not used by or for the people of the State of California.

That in the process or manufacture of canning one-pound oval cans the heads, tails and offal of the sardines are eliminated before processing or putting said sardines in one-pound oval cans. That all of the heads, tails and offal taken from the sardines are used by the canners in the manufacture of fish meal, fish scrap, fish fertilizer and fish oil. That, in addition to said offal, the canners also take a percentage of their catch and run through their reduction plants in manufacturing a commodity for other than human consumption. That this percentage under the present act is thirty-two and one-half per cent of the total catch, and during the past two years that of all the sardines caught and used by the canners of the state of California more than fifty per cent goes to the reduction plants of the canners and is used for purposes other than for human consumption.

That while he has been connected with the sardine industry in manufacturing, selling and operating reduction plants in California and Alaska that all of said reduction plants are used by the canners for manufacturing commodities to be used for purposes other than human consumption, and in the vernacular of the sardine canning industry this term, by-products, refers to products not to be used for human consumption.

Other than this affiant sayeth not.

John R. Grigg.

Subscribed and sworn to before me this 11th day of May, 1934.

Lillian Ralston, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

My commission expires March 27, 1936.

[File endorsement omitted.]

[fol. 46] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF E. W. LOCKWOOD ON BEHALF OF PLAINTIFF IN SUPPORT OF PRELIMINARY INJUNCTION—Filed May 12, 1934

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

E. W. Lockwood, being first duly sworn, deposes and says:

That he is at present, and has been for the past ten years, employed by the Wilbur-Ellis Company, importers, exporters and brokers, who now are and have been for a number of years engaged in selling sardine products, particularly fish oil and fish meal for other than human consumption, and that in the course of his duties he has investigated the figures relative to the amount of such commodities manufactured out of sardines by the canners and oil and meal producers of the State of California, and that he knows of his own knowledge that approximately one-third of the nineteen hundred and thirty-three and nineteen hundred and thirty-four production of fish meal has been shipped outside of the State of California into foreign and interstate commerce. Also that all of the fish flour manufactured by the Bayside Fish Flour Company for human consumption is shipped outside the State of California and in [fol. 47] foreign and domestic commerce; affiant also knows that practically 75% of the fish oil manufactured by the canners and fish oil and fish meal producers of the State of California is shipped outside of the State of California in interstate and foreign commerce.

E. W. Lockwood.

Subscribed and sworn to before me this 25th day of April, 1934.

Lillian Ralston, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[File endorsement omitted.]

[fol. 48] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF E. T. MEEKIN OF BEHALF OF PLAINTIFF IN SUPPORT OF PRELIMINARY INJUNCTION—Filed May 12, 1934

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

E. T. Meekin, being first duly sworn, deposes and says:

That he is a citizen of the United States and a resident of the City and County of San Francisco, State of California, and is at present and has been for the past ten years, an officer and stockholder of the California Press Manufacturing Company, who manufacture machinery for reduction plants used in connection with the manufacture of by products from sardines by the sardine canners of the State of California and Alaska. That he is very familiar with practically all of the reduction plants used by the canners in the State of California and the territory of Alaska, and to his knowledge, there is not one reduction plant used to manufacture fish meal, fish scrap, fish flour or fish fertilizer, for human consumption; that it is common knowledge and the vernacular of the phrase reduction plant, amongst the sardine canning business, that the terms fish meal, fish sardines, fish flour, fish fertilizer, etc., is always used in conjunction with non-edible products not used for, [fol. 49] intended to be used for human consumption. That the only plants manufacturing fish flour for human consumption that affiant has any knowledge, are the plants operated by the Bayside Fish Flour Company.

That affiant is familiar with the fish flour manufacturing plant of the Bayside Fish Flour Company located at Point San Pablo, Richmond, California, and that said plaintiff's plant does not use the same process in its entirety as is used by reduction plants for manufacturing commodities other than for human consumption.

Other than this affiant sayeth not.

E. T. Meakin.

Subscribed and sworn to before me this 30th day of April 1934.

(Sgd.) Lillian Ralston, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[File endorsement omitted.]

[fol. 50] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT OF Y. WORRALL ON BEHALF OF PLAINTIFF IN SUPPORT OF PRELIMINARY INJUNCTION—Filed May 12, 1934

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Y. Worrall, being first duly sworn, deposes and says:

That she is the Assistant-Secretary of the Bayside Fish Flour Company, and as such officer, is familiar with the bookkeeping and working of the said corporation.

That the Bayside Fish Flour Company is engaged exclusively in the business of manufacturing fish flour for use for human consumption and during the fishing season ending on February 15, 1934, had contracts with fishermen domiciled in the States of Oregon and Washington, to wit:

Name	State	Boat
Captain Carl Carlson	Washington	Lorenz
Captain Mike Sunich (Copy of contract attached hereto and marked Exhibit "A")	Washington	Excellent
Captain Sandanger	Washington	Edgar "C"
Captain H. Olsvik	Washington	Limit
Captain R. Jensen	Washington	Wisconsin

That said fishermen caught sardines outside of the three [fol. 51] mile limit of the State of California and delivered them to the Bayside Fish Flour Company at its Point San Pablo, Richmond, California, plant, and that there was only used in said plant, sardines caught beyond the three mile limit.

That the said Bayside Fish Flour Company ships all of its fish flour out of the State of California in foreign commerce, to wit, to Germany and Holland and that none of said commodity is used within the State of California; that there are approximately one hundred fifty people directly and indirectly employed at the Point San Pablo plant.

That the said Fish and Game Commission of the State of California, through the Attorney General of the State of California, stopped the plaintiff from operating its plant and prohibited them from receiving fish from the fishermen

above referred to as per their agreement, and that it will be necessary for the said Bayside Fish Flour Company to again contract with the above referred to fishermen for the coming season of 1934-35, and it will also be necessary to expend approximately Ten Thousand ($10,000.00) Dollars to put said plant in operation before August 1, 1934, and that it will further be necessary for said plaintiff to contract with its customers in Europe to purchase its fish flour.

That affiant has made an examination of the reports of the Fish and Game Commission and has read the statement of Mr. N. B. Scoffield in the Thirtieth Bienn-al Report of the California Fish and Game Commission at page twenty-three, wherein he stated:

"On the other hand, the straight canning business apparently does not appear to be profitable to all of the canners. Certain canners have informed the undersigned that they are selling their canned sardines for about the cost, or less than cost, of production, and are willing to do this for the profit they are able to make out of the by-products, to wit, fertilizer and oil, which come from the offal of the fish canned and from the 25 per cent of the fish taken into the plant which is allowed by law."

[fol. 52] And again in the Thirty-Second Biennial Report of the Fish and Game Commission at page sixty-seven, Mr. Scoffield stated the following:

"In our last biennial report we told of how the fish reduction act of 1929, which permits canners to use 32½ per cent of the sardine catch for reduction purposes, stimulated the canning of sardines in order that the larger profit might be made on the percentage used for reduction, until the sardine catch of the season of 1929-1930 reached the unprecedented amount of 322,600 tons, and this in spite of the fact that a closed season was established which was designed to reduce the catch 20 per cent. The theory, that the sardine catch would be limited by the amount of canned sardines the markets would absorb, did not work. The price of canned sardines had declined still further below the cost of production and the market for the so-called by-products, oil and meal, had experienced a decided slump."

That the action of defendants in restraining and in endeavoring to secure an injunction against plaintiff to cause it to discontinue the use of fish flour for human consumption, will work a great hardship upon plaintiff and will deprive it from the free and unrestricted use of its property and injure their manufacturing business to such an extent as to ruin and deprive it entirely of its said business and will throw said corporation into bankruptcy.

That at no time has plaintiff shipped or intermingled any of its fish flour with intrastate commerce of the State of California; that affiant knows of her own knowledge that none of the fish delivered to plaintiff's plant during the past season were caught within the waters of the State of California.

Other than this affiant sayeth not.

Y. Worrall.

Subscribed and sworn to before me this 27th day of April, 1934.

C. R. Holton, Notary Public in and for the City and County of San Francisco, State of California. (Seal.)

[fol. 53] EXHIBIT "A" TO AFFIDAVIT

San Francisco, California,
October 9, 1933.

M. S. "Excellent" and Owners,
Seattle, Washington.

GENTLEMEN:

The undersigned company agrees to take sardines from your boat for the season September, 1933, to March 1, 1934. The price of sardines will be at market price per ton, with a minimum of $6.00 per ton delivered at our Point San Pablo plant; it being understood that your boat is fully equipped with purse seine net, turn table, and any other necessary gear.

Ordinarily you will not be required to fish under a limit but should conditions necessitate a limit occasionally it will not be less than fifty tons. We agree to take fish from you continuously up to the limit of our permit from the State of California subject, of course, to machinery breakdowns,

Sunday fishing at our option. It is understood that you will proceed to San Francisco immediately upon receipt of this letter.

Kindly acknowledge the duplicate copy of this letter and return in the enclosed self addressed envelope.

Bayside Fish Flour Company, Y. Worrall, Assistant-Secretary.

Accepted. M. S. "Excellent" and Owners. Mike Chaleto.

[File endorsement omitted.]

[fol. 54] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS BILL OF COMPLAINT FOR INJUNCTION—Filed May 28, 1934

Come now the above-named defendants and move the Court to dismiss the Bill of Complaint for Injunction upon the ground that the Court has no jurisdiction of this action and that said Bill does not state facts sufficient to constitute a cause of action or ground for complaint against these defendants or either of them, or to entitle plaintiff to any relief by injunction or otherwise.

Wherefore defendants pray that said Bill be dismissed and that no injunction, temporary or permanent, be issued herein.

U. S. Webb, Attorney General of California; Ralph O. Marrow, Deputy Attorney General; Darwin Bryan, Deputy Attorney General, Attorneys for Defendants.

[fol. 55] MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO DISMISS

Fish and game can only become the subject of private ownership in a qualified way and never the subject of commerce except with the consent of the State. The people can regulate fish and game upon such terms as they choose and this power is a valid exercise of police power.

Geer v. Connecticut, 161 U. S. 519.

Paladini v. Superior Court, 178 Cal. 369.

People v. Stafford Packing Co., 193 Cal. 458.

People v. Monterey Fish Products, 195 Cal. 548.
Ex Parte Bailey, 155 Cal. 472.
Ex Parte Kenneke, 136 Cal. 527.
Ex Parte Maier, 103 Cal. 476.
Suttori v. Packham, 48 Cal. App. 88.
In re Phoedovius, 177 Cal. 238.
People v. Truckee Lumber Co., 116 Cal. 397.

The principle set forth above is applicable to sea products caught upon the high seas beyond the three-mile limit of State jurisdiction and sought to be brought into or transported over portions of the State which have been subjected to statutory regulation affecting the taking possession and sale of fish and other marine products.

See—

Van Camp Sea Food Co. v. Dept of Natural Resources, 30 Fed. (2d) 111.
Silz v. Hesterberg, 211 U. S. 31.
Ex Parte Maier, supra.
[fol. 56] In re Delininger, 108 Fed. 623.
Union Fisherman, etc. Co. v. Schoemaker, 36 Ore. 16; 193 Pac. 476;
23 Corpus Juris. 628.
Pacific Steam Whaling Co. v. Alaska Packers Assn., 133 Cal. 632.
Phelps v. Racey, 19 Am. Rep. 140.
Roth v. State, 37 N. E. 259.
State v. Schuman, 58 Pac. 661.

The provisions of the statute in question do not violate that provision of the Constitution of the United States which authorizes Congress to regulate commerce among the states where the power to regulate the use of fish is exercised in good faith and for the purposes of conservation and not for the purpose of evading the commerce clause or other provisions of the Federal Constitution.

Phelps v. Racey, supra.
Roth v. State, supra.
Geer v. Connecticut, supra.
Van Camp Sea Food Co. v. Dept. of Nat. Resources, supra.

The statute in question is not discriminatory for the reason that there is a natural intrinsic distinction between

the business of reducing fish and the business of packing fish, as defined in the Fish and Game Code.

[fol. 56a] A statute cannot be declared unconstitutional on the theory that inasmuch as the Legislature has not expressly prohibited discrimination between applicants the Commission may therefore favor one over others and might perhaps create a monopoly by granting a permit to one person to take all the available fish.

Monongahela Bridge v. United States, 216 U. S. 117.
People v. Globe Grain & Milling Co., 211 Cal. 121.

The wild game within a state belongs to the people in their collective sovereign capacity; it is not the subject of private ownership except insofar as the people may elect to make it so; they may, if they see fit, absolutely prohibit the taking or any traffic or commerce in it, if deemed necessary for its protection or preservation or the public good.

Ex parte Maier, supra.
Geer v. Connecticut, supra.

The protection and preservation of game have been secured by law in all civilized countries and may be justified on many grounds, one of which is for purposes of food. The measures best adapted to this end are for the Legislature to determine, and courts can not review its discretion.

Phelps v. Racey, supra.

[fol. 57] When fish are caught in another state and brought into and mingled with and become a part of the mass property of the state, they become subject to the laws thereof, and plaintiff, having imported them with knowledge of the existence of such law, must suffer the penalties which it prescribes.

State v. Schuman, supra.

Also:

Roth v. State, supra.
Svenson v. Engelke, 211 Cal. 500.

Dated May 28, 1934.

Respectfully submitted, U. S. Webb, Attorney General; Ralph O. Marron, Deputy Attorney General; Darwin Bryan, Deputy Attorney General, Attorneys for Defendants.

Due service of the within Motion to Dismiss and Memorandum of Points and Authorities admitted this 28th day of May, 1934.

Roy Daily, Attorney for plaintiff.

[File endorsement omitted.]

[fol. 58] In United States District Court for the Northern District of California

Equity

3721-S

Bayside Fish Flour Company, a Corporation, Plaintiff,

vs.

J. Dale Gentry, Earl B. Gilmore, I. Zellerbach, Thomas D. Johnston, U. S. Webb and John L. Farley, Defendants

Roy Daily, Esq., Attorney for Plaintiff, 625 Market Street, San Francisco, California.

U. S. Webb, Esq., Attorney General, Attorney for Defendants, 640 State Building, San Francisco, California.

Before Wilbur, Circuit Judge, and St. Sure and Kerrigan, District Judges

Opinion—Filed Aug. 31, 1934

St. Sure, District Judge:

Plaintiff is a corporation engaged in the business of manufacturing, under a patented process, fish flour from sardines caught on the high seas beyond the three-mile limit of the State of California. Its plant is located at Point San Pablo, this State. Suit is brought by plaintiff against members of the Fish and Game Commission, its executive officer, and the Attorney General, all officers of the State, to enjoin the execution of certain provisions of Act 2870, establishing a Fish and Game Code (Stats. 1933, p. 394; Deering Supplement 1933, p. 1418), revising and consolidating the law of California relating to fish and game and other wild life, and containing, among other things, com-

mercial fishing regulations. Under the provisions of the Code, a license was issued to the plaintiff by the State "to can, cure, preserve or pack fish which are taken in the waters of this state, or fish brought into this State in a fresh condition, or to manufacture fish-scrap, fish-meal, fish-oil, chicken-feed or fertilizer from fish or fish offal, or to deal in mollusks or crustaceans by wholesale."

[fol. 59] The sections of the code involved read as follows:

"1064. Waste. It is unlawful to cause or permit any deterioration or waste of any fish taken in the waters of this state, or brought into this state, or to take, receive or agree to receive more fish than can be used without deterioration, waste, or spoilage. Except as allowed by this code, it is unlawful to use any fish, or part thereof, except fish offal, in a reduction plant or by a reduction process."

"1065. Sardines. Sardines may be taken for use in a reduction plant, or by a packer, only in accordance with the provisions of this article, as follows: In districts 4, 4-¾, 18, 19, 20, 20A, and 21 between November 1 and March 31; elsewhere in the State between August 1 and February 15. This section does not prohibit the taking of sardines for the purpose of salting, curing, smoking or drying or for the purpose of packing in cans commonly known as quarter pound or square cans less than 10 ounces in net weight; provided, that in a ten ounce can, fish of a size of not less than eight fish to the can may be used, and there shall be added to the commonly known quarter-pound can not less than one ounce of olive oil or a commercial salad oil, and a proportionately larger amount of such oil to the larger sizes of cans."

"1076. Nuisance. Any reduction plant in which any fish or any part thereof is used in violation of the provisions of this article, or in violation of any rule, regulation or order of the commission, is a nuisance. Whenever the existence of such nuisance is shown to the satisfaction of the superior court of the county in which the reduction plant is situated, by complaint filed in the name of the people of the State of California, the court may issue a temporary injunction to abate and prevent the continuance or recurrence of such nuisance. If the existence of a nui-

sance is established in an action, as provided herein, an order of abatement shall be entered as part of the judgment in the case, which order shall direct the closing, for twelve months, of the building or place where such nuisance was maintained, and, during such time, said building or place shall be and remain in the custody of the court."

Plaintiff alleges in its bill "that the construction placed by the Fish and Game Commission upon Sections 1064, 1065 and 1076 violates the Fourteenth Amendment to the Constitution of the United States, in that the People of the State of California will not permit this plaintiff to manufacture a product for human consumption by a reduction process either with or without a permit"; that said sections prohibit plaintiff from taking and using sardines unless it operates a canning or packing plant within the state, but permit other residents, to-wit, packers or "canners of one-pound oval cans," to use unlimited quantities of sardines taken from the waters of the state or from the ocean beyond the three-mile limit; that plaintiff may only take and use sardines in unlimited quantities provided it put them in tin cans, and plaintiff is forbidden to put sardines, after process, in flour sacks; that plaintiff has been threatened [fol. 60] with arrest, its contracts with fishermen frustrated, its reduction plant closed, and as a consequence, plaintiff has suffered great and irreparable injury.

It is contended that the statutes above mentioned violate the commerce clause (Article 1, Section 8, Clause 3) and the Fourteenth Amendment to the Constitution of the United States, and also those certain provisions of the State Constitution relative to deprivation of property without just compensation, special privileges and immunities, and uniformity of laws.

The arguments of plaintiff, namely, that the statutes interfere with and place a burden upon interstate commerce; that the execution of the statute deprives plaintiff of property without due process of law; that those taking and using fish, as does plaintiff, acquire the right to private ownership and the protection of the commerce clause; that the statute has no relation to the conservation of the natural resources of the state, nor was it passed by the legislature in the proper exercise of the police power; were all presented, considered, and decided adversely to plaintiff's

contentions by the Circuit — of Appeals of this Circuit in Van Camp Sea Food Co. v. Department of Natural Resources, 30 Fed. (2d) 111, and cases cited therein; see also Paladini v. Superior Court, 178 Cal. 369; People v. Stafford Packing Co., 193 Cal. 719; People v. Monterey Fish Products Co., 195 Cal. 548; Ex parte Bailey, 155 Cal. 472; Ex parte Kenneke, 136 Cal. 527; Ex parte Maier, 103 Cal. 476; Suttori v. Peckham, 48 Cal. App. 88; In re Phoedovius, 177 Cal. 238; People v. Truckee Lumber Co., 116 Cal. 397.

When a legislative enactment is attacked upon the ground that it is arbitrary, unreasonable, and discriminatory, and constitutes special legislation, violating the prohibition of both the state and federal constitutions, all presumptions and intendments are in favor of the reasonableness and fairness of the legislation, and the decision of the legislature as to what is a sufficient distinction to warrant the classification will not be overthrown by the courts unless it is palpably arbitrary. People v. Monterey Fish Products Co., supra.

Section 1060 of the Code defines reduction plant and [fol. 61] packer as follows:

"(a) 'Reduction plant' means any plant used in the reduction of fish into fish flour, fish meal, fish scrap, fertilizer, fish oil or other fishery products or by-products.

"(b) 'Packer' means any person canning fish or preserving fish by the common methods of drying, salting, pickling or smoking."

Plaintiff alleges in its bill that it is in the exclusive business of purchasing fresh or raw sardines and manufacturing therefrom an edible product known as fish flour.

Under the definition (a) above quoted plaintiff is in the business of reducing fish, is operating a reduction plant. It would therefore appear that the statute in question is not discriminatory, for, as suggested by the Attorney General, there is a natural intrinsic distinction between the business of reducing fish and the business of packing fish as defined in the Fish and Game Code.

The motion to dismiss the bill of complaint will be granted.

Dated August 31, 1934.

[File endorsement omitted.]

[fol. 62] IN UNITED STATES DISTRICT COURT

ORDER GRANTING MOTION TO DISMISS—Filed Aug. 31, 1934

Ordered that defendants' motion to dismiss the bill of complaint herein be and the same is hereby granted.

Dated August 31, 1934.

Curtis D. Wilbur, United States Circuit Judge; A. F. St. Sure, United States District Judge; Harold Louderback, United States District Judge.

[File endorsement omitted.]

[fol. 63] IN UNITED STATES DISTRICT COURT

ORDER VACATING ORDER OF AUG. 31, 1934, AND GRANTING MOTION TO DISMISS—Filed Sept. 1, 1934

Whereas Honorable Curtis D. Wilbur, United States Circuit Judge; Honorable Frank H. Kerrigan, United States District Judge, and Honorable A. F. St. Sure, United States District Judge, constituted a three-judge statutory court for the hearing of and did hear the above entitled suit; and

Whereas through inadvertence Honorable Harold Louderback, United States District Judge, on August 31, 1934, signed an order of this court dismissing the bill of complaint herein, which order should have been signed by Honorable Frank H. Kerrigan, United States District Judge; now therefore it is hereby

Ordered that the order heretofore made and entered on August 31, 1934, granting defendants' motion to dismiss the bill of complaint herein, be and the same is hereby vacated and set aside: and upon further and due consideration it is

Ordered that defendants' motion to dismiss the bill of complaint herein be and the same is hereby granted.

Dated September 1, 1934.

Curtis D. Wilbur, United States Circuit Judge; A. F. St. Sure, United States District Judge; Frank H. Kerrigan, United States District Judge.

[File endorsement omitted.]

[fol. 64] IN UNITED STATES DISTRICT COURT OF CALIFORNIA

[Title omitted]

PETITION FOR APPEAL—Filed Oct. 2, 1934

To the Honorable Curtis D. Wilbur, Circuit Judge, and A. F. St. Sure and Frank H. Kerrigan, District Judges, composing said Court:

Now, come the Bayside Fish Flour Company, a corporation, plaintiff in the above entitled cause, and conceiving itself aggrieved by the order and decree made and entered by the above named Court in the above-entitled cause on the 1st day of September, 1934, wherein, among other things, said Court, composed of Judge Curtis D. Wilbur, Circuit Judge, Judge A. F. St. Sure and Judge Frank H. Kerrigan, Districts Judges, under Section 266 of the United States Judicial Code, denied the plaintiffs' application for an interlocutory injunction in said cause and granted defendants' motion to dismiss bill of complaint herein, do hereby appeal to the Supreme Court of the United States from said order and decree, and especially that portion of it denying and refusing the plaintiffs' application for an interlocutory injunction and granting defendants' Motion to Dismiss, all of which reasons are set forth in the assignment of errors which is filed herewith. In view of the fact that complainant will sustain irreparable harm and damage by reason of the failure and refusal of said Court to grant it an interlocutory injunction, this complainant prays that this, its petition for appeal may be allowed; and that an order be made by said Court pending said appeal in the Supreme Court of the United States, granting the tem-
[fol. 65] porary injunction pending the hearing and determination of said cause on appeal to the Supreme Court of the United States.

Complainants further pray that a transcript of the record proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States at Washington, D. C.

Dated this 2nd day of October, 1934.

Roy Daily, Attorney for Bayside Fish Flour Co.

[fol. 66] IN THE DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Title omitted]

POINTS AND AUTHORITIES ON PETITION FOR APPEAL

L. O. Johnson vs. E. J. Haydel, 278 U. S. 16, 73 L. Ed. 155:

One whose business will suffer great and irremediable loss by the enforcement of a statute which is alleged to be unconstitutional is entitled to a temporary injunction against the enforcement of the act, pending a suit to test its constitutionality.

Roy Daily, Attorney for Plaintiff.

Receipt of copy of the within Petition for Appeal and points and authorities acknowledged October 2, 1934.

U. S. Webb, Attorney General; Ralph O. Marrow(?) Deputy; Darwin Bryan, Deputy, Attorneys for Defendants.

[File endorsement omitted.]

[fols. 67–74] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Oct. 2, 1934

Now, come plaintiff, Bayside Fish Flour Company, a corporation, and files the following assignment of errors upon which it will rely on its appeal from the decree made by this Court on the 1st day of September, 1934, in the above entitled cause:

1. The Court erred in denying the plaintiff's application for an interlocutory injunction.

2. The Court erred in granting defendants' Motion to Dismiss bill of complaint.

3. The Court erred in not granting an interlocutory injunction to the plaintiff on its application therefor.

4. The Court erred in holding that defendants Motion to Dismiss should be granted.

5. The Court erred in not holding that the plaintiff was entitled to the interlocutory injunction applied for.

Roy Daily, Attorney for Plaintiff.

Receipt of copy of the within Assignment of Errors acknowledged October 2, 1934.

U. S. Webb, Attorney General; R. O. Marrow, Deputy; Darwin Bryan, Deputy, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 75] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING APPEAL—Filed Oct. 8, 1934

This day this cause came on to be heard on the application of the Plaintiff in the above entitled cause for an appeal to the Supreme Court of the United States from the decree rendered in this cause by three Judges denying the plaintiff's application for an interlocutory injunction and granting defendants' Motion to Dismiss Bill of Complaint.

It is ordered, adjudged and decreed that said appeal be and is hereby allowed provided the plaintiff shall execute and file in this cause a bond to be approved by the Clerk of this Court in the penal sum of ($250.00) Two Hundred and Fifty Dollars, payable to the State of California, conditioned as provided by law.

Ordered, adjudged and decreed, this the 2d day of October, 1934.

Curtis D. Wilbur, Circuit Judge; A. F. St. Sure, District Judge; Frank H. Kerrigan, District Judge.

[File endorsement omitted.]

[fols. 76 & 77] Bond on Appeal for $250.00, approved and filed Nov. 23, 1934, omitted in printing.

[fol. 78] IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Oct. 8, 1934

Appellant and plaintiff in error deem that the parts of the record hereinafter referred to are necessary for a proper consideration of the case.

1. Original Bill of complaint with exhibits thereto.
2. Decree of district judge, dated September 1st, 1934, granting defendants and appellees motion to dismiss bill of complaint.
3. Opinion of the three judge court dated August 31, 1934.
4. Order of the three judge court dated August 31, 1934, granting defendants and appellees motion to dismiss the bill of complaint.
5. Defendants and appellees motion to dismiss.
6. Each and every affidavit offered by the appellant and plaintiff in error, with exhibits thereto.
7. Petition for appeal and decree allowing the same.
8. Bond and assignment of error.
13. All illustrative charts and tables used at the hearing of the motion for temporary injunction.

Roy Daily, Attorney for Appellant and Plaintiff in Error.

(Endorsed:) Receipt of a copy of the within parts of record which appellant deems necessary for the consideration thereof is hereby admitted this 8th day of October, 1934.

U. S. Webb, Ralph O. Marron, Darwin Bryan, Attorneys for Defendants and Appellees.

[File endorsement omitted.]

[fol. 79] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 80] Citation in usual form showing service on U. S. Webb et al., filed Nov. 27, 1934, omitted in printing.

Endorsed on cover: File No. 39,299. N. California, D. C. U. S. Term No. 2. Bayside Fish Flour Company, Appellant, vs. J. Dale Gentry, Earl B. Gilmore, I. Zellerbach, et al. Filed January 29, 1935.